

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 1133 of 2002(C)

AGAINST THE ORDER DATED 30/10/2001 IN E.I.C 7/2001 of E.I.COURT,
KOZHIKODE

.....

APPELLANT: RESPONDENT

THE REGIONAL DIRECTOR,
E.S.I.CORPORATION,
THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENTS: APPLICANT

M/S.SUBRAYA ANANTHA KAMATH & SONS,
SUBRAYA ANANTH KAMATH ROAD,
ADKATHBAIL, KASARAGOD - 671 021.,
REPRESENTED BY ITS MANAGING PARTNER.

BY ADV. SRI.U.K.RAMAKRISHNAN
SMT.P.VIJAYAMMA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 18/12/2007, ALONG WITH MFA NO. 1166 OF 2002 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

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M.F.A.Nos.1133/2002 and 1166/2002
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Dated this the 18th day of December, 2007

J U D G M E N T

The common question arising for consideration in both these appeals is whether the respondent is the principal employer of a headload worker who is a member of Headload Workers Welfare Board Local Committee, constituted under Section 18 of the Kerala Headload Workers Act. The respondent contended that the committee was the principal employer and filed two cases as E.I.C. Nos.7/2001 and 8/2001 for a declaration that he was not the principal employer but the principal employer was the committee constituted under Section 18 of the Kerala Headload Workers Act. The respondent also sought a relief that the headload workers will not come within the purview of the 'employee' under the E.S.I. Act.

2. The two cases were allowed by the E.S.I Court holding that the committee is the Principal Employer and the headload workers will not come within the purview of the E.S.I. Act. Challenging those decisions the E.S.I. Corporation has filed these appeals.

3. In Employees State Insurance Corporation and another vs.N.Babu Rao, the Director took a view that the principal employer is the respondent in that case. That order was set aside by the E.I.Court holding that, in E.I.C.No.118/1993 the E.I.Court, Thrissur, set aside that finding and held that the principal employer of a headload worker is the committee and not the establishment. It was also held that the headload worker will not come within the purview of the Act. That order was challenged in M.F.A.No.718/1998 before this Court. This Court confirmed the decision of the E.I.Court. Challenging those decisions, the Corporation filed S.L.P.No.1163/2004 which was subsequently converted as Civil Appeal No.5215/2006. The Apex Court allowed the Civil Appeal and set aside the orders passed by this Court as well as the E.I.Court and remanded the matter for fresh consideration, after hearing the committee as well as the State. The E.I.Court was directed to issue notice to the State Government as well as the Committee and was directed to decide the matter afresh after hearing them and the appellant- Employees State Insurance Corporation as well as the establishment.

4. The principle laid down in those decisions is applicable to the facts of these cases also. Neither the State nor the Committee were heard. I am of the view that the matter needs re-consideration by the Employees Insurance Court after impleading the State as well as the Committee constituted under Section 18 of the Act. So the decision of the E.I.Court in E.I.C.Nos.7/2001 and 8/2001 are liable to be set aside.

In the result, the M.F.A.Nos.1133/2002 and 1166/2002 are allowed. The orders passed by the E.I.Court in E.I.Nos.7/2001 and 8/2001 are hereby set aside. The E.I.Court is directed to take E.I.C.No.7/2001 and E.I.C.No.8/2001 back to file and dispose of the same in accordance with law after impleading the State as well as the Committee constituted under Section 18 of the Kerala Headload Workers Act as additional respondents in the proceedings and also with due notice to them and after giving all parties reasonable opportunity to file their objections and lead evidence.

K.PADMANABHAN NAIR,
Judge

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M.F.A.Nos.1133/2002 & 1166/2002

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K.PADMANABHAN NAIR, J.

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M.F.A.Nos.1133/2002 & 1166/2002
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J U D G M E N T

18th December, 2007